



Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change to Amend the NYSE American Equities Price List and Fee Schedule

January 13, 2022.

Pursuant to Section 19(b)(1)<sup>1</sup> of the Securities Exchange Act of 1934 (the “Act”)<sup>2</sup> and Rule 19b-4 thereunder,<sup>3</sup> notice is hereby given that, on December 30, 2021, NYSE American LLC (“NYSE American” or the “Exchange”) filed with the Securities and Exchange Commission (the “Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend certain Standard Rates and requirements for transaction fees and credits that add and remove liquidity in securities at or above \$1 and reformat the section of the NYSE American Equities Price List and Fee Schedule (“Price List”) setting forth transactions fees for all transactions other than transactions using Retail Order Rates, transactions in securities below \$1, and transactions by an Electronic Designated Market Makers (“eDMM”) in assigned securities. The Exchange proposes to implement the fee changes effective January 3, 2022. The proposed change is available on the Exchange’s website at [www.nyse.com](https://www.nyse.com), at the principal office of the Exchange, and at the Commission’s Public Reference Room.

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<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 15 U.S.C. 78a.

<sup>3</sup> 17 CFR 240.19b-4.

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

### A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

#### 1. Purpose

The Exchange proposes to amend the Standard Rates for transaction fees and credits that add and remove liquidity in securities at or above \$1 and reformat the section of the Price List setting forth transactions fees for all transactions other than transactions using Retail Order Rates, transactions in securities below \$1, and transactions by an eDMM in assigned securities.

The proposed changes respond to the current competitive environment where order flow providers have a choice of where to direct liquidity-providing and liquidity-removing orders by offering further incentives for ETP Holders to send additional adding and removing liquidity to the Exchange.

The Exchange proposes to implement the fee changes effective January 3, 2022.

#### Competitive Environment

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system "has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed

companies.”<sup>4</sup>

While Regulation NMS has enhanced competition, it has also fostered a “fragmented” market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that “such competition can lead to the fragmentation of order flow in that stock.”<sup>5</sup> Indeed, cash equity trading is currently dispersed across 16 exchanges,<sup>6</sup> numerous alternative trading systems,<sup>7</sup> and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly-available information, no single exchange currently has more than 17% market share.<sup>8</sup> Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange currently has less than 1% market share of executed volume of cash equities trading.<sup>9</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm’s reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which the firm routes order flow.

In response to this competitive environment, the Exchange has established incentives for

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<sup>4</sup> See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7-10-04) (Final Rule) (“Regulation NMS”).

<sup>5</sup> See Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7-02-10) (Concept Release on Equity Market Structure).

<sup>6</sup> See Cboe U.S Equities Market Volume Summary, available at [https://markets.cboe.com/us/equities/market\\_share](https://markets.cboe.com/us/equities/market_share). See generally <https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html>.

<sup>7</sup> See FINRA ATS Transparency Data, *available at* <https://otctransparency.finra.org/otctransparency/AtsIssueData>. A list of alternative trading systems registered with the Commission is *available at* <https://www.sec.gov/foia/docs/atlist.htm>.

<sup>8</sup> See Cboe Global Markets U.S. Equities Market Volume Summary, available at [http://markets.cboe.com/us/equities/market\\_share/](http://markets.cboe.com/us/equities/market_share/).

<sup>9</sup> See *id.*

ETP Holders who submit orders that provide liquidity on the Exchange. The proposed fee change is designed to attract additional order flow to the Exchange by incentivizing ETP Holders to send additional adding liquidity to the Exchange to qualify for the liquidity removing tiers and fees. The Exchange has also established incentives for ETP Holders to remove liquidity from the Exchange. In addition, as detailed below, the proposed higher credits for Mid-Point Liquidity Orders (“MPL Orders”)<sup>10</sup> adding liquidity to the Exchange are intended to create incentives for price improving liquidity and increasing the quality of order execution on the Exchange’s market, which benefits all market participants, insofar as MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the Protected Best Bid and Offer (“PBBO”).<sup>11</sup>

#### Proposed Rule Change

Currently, for transactions in securities priced at or above \$1.00, other than transactions by eDMMs in assigned securities, the Exchange offers the following credits for displayed orders that add liquidity to the Exchange:

- Displayed orders and MPL Orders that add liquidity to the Exchange where the ETP Holder has an average daily volume (“ADV”) of at least 2,500,000 shares (“Adding ADV”)<sup>12</sup> currently receive a credit of \$0.0026 per share.
- Displayed orders and MPL Orders that add liquidity to the Exchange where an ETP Holder has Adding ADV of at least 750,000 shares currently receive a \$0.0025 credit per displayed and MPL share. Where an ETP Holder does not have an Adding ADV of at least 750,000 shares, such orders currently receive a \$0.0024 per share.

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<sup>10</sup> See Rule 7.31E(d)(3) (description of MPL Order).

<sup>11</sup> See Rule 1.1E(dd) (definition of PBBO).

<sup>12</sup> As defined in the Fee Schedule, Adding ADV means an ETP Holder’s average daily volume of shares executed on the Exchange that provided liquidity.

- Orders that add displayed liquidity to the Exchange and that set a new best bid or offer (“BBO”) on NYSE American<sup>13</sup> where an ETP Holder has an Adding ADV of at least 2,500,000 shares currently receive a \$0.0027 per share credit. Where an ETP Holder does not have an Adding ADV of at least 2,500,000 shares, such orders currently receive a \$0.0026 per share credit.
- The current fee for orders removing liquidity from the Exchange where an ETP Holder has an Adding ADV of at least 10,000 shares is \$0.0026 per share. Where an ETP Holder does not have an Adding ADV of at least 10,000 shares, the Exchange charges \$0.0030 per share for all executions that remove liquidity from the Exchange.

The Exchange proposes to restructure its tier requirements, credits, and fees in order to attract liquidity to the Exchange. The Exchange has not made substantial changes to its pricing in several years and believes that some of the current tier requirements, credits, and fees no longer incentivize ETP Holders to send liquidity to the Exchange, and therefore should be modified. In addition, the Exchange believes that harmonizing the tier requirements for orders that add liquidity and orders that remove liquidity from the Exchange will make its Price List clearer and more transparent for ETP Holders. The Exchange believes that this combination of changes, taken together, will cause ETP Holders to send more liquidity to the Exchange.

Specifically, the Exchange proposes to revise these fees and credits by: (a) reorganizing the fees as “Tier 1,” “Tier 2,” or “Non-Tier”; (b) adjusting the Adding ADV levels required to qualify for Tier 1 and Tier 2 fees and credits and harmonizing such levels for orders adding liquidity and orders removing liquidity; (c) proposing separate fees and credits for MPL Orders adding liquidity; and (d) adjusting the fees and credits available for ETP Holders qualifying for proposed Tier 1, Tier 2, and Non-Tier rates, as follows.

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<sup>13</sup> See Rule 1.1E(h) (definition of BBO).

The Exchange proposes to define a “Tier 1,” pursuant to which it would make its best rates available to ETP Holders with Adding ADV of at least 3,500,000 shares. This Adding ADV requirement of 3,500,000 shares is an increase from the current Adding ADV level of 2,500,000 shares required for ETP Holders to access the Exchange’s best rates for orders adding liquidity, and from the current Adding ADV level of 10,000 shares required for ETP Holders to access the Exchange’s best rates for orders removing liquidity. As proposed, ETP Holders that qualify for Tier 1 would be eligible for the following rates:

- A credit of \$0.0026 per share for orders adding displayed liquidity (no change from the current rate);
- A credit of \$0.0030 per share for MPL Orders adding liquidity (an increase from the current credit of \$0.0026 per share);
- A credit of \$0.0029 per share for orders adding displayed liquidity that set a new BBO on the Exchange (an increase from the current credit of \$0.0027 per share); and
- A fee of \$0.0026 per share for orders removing liquidity (no change from the current rate).

The Exchange also proposes to define a “Tier 2,” setting out rates available to ETP Holders with Adding ADV of at least 700,000 shares. This Adding ADV requirement of 700,000 is a decrease from the current Adding ADV level of 750,000 shares required for ETP Holders to access certain pricing for orders adding liquidity. (Currently, there is no second-tier Adding ADV requirement for orders removing liquidity.) As proposed, ETP Holders that qualify for Tier 2 would be eligible for the following rates:

- A credit of \$0.0023 per share for orders adding displayed liquidity (a decrease from the current credit of \$0.0025 per share);
- A credit of \$0.0029 per share for MPL Orders adding liquidity (an increase from the current credit of \$0.0025 per share);

- A credit of \$0.0024 per share for orders adding liquidity that set a new BBO on the Exchange (a decrease from the current credit of \$0.0026 per share); and
- A fee of \$0.0027 for orders removing liquidity (an increase from the current fee of \$0.0026 per share).

The Exchange also proposes to define “Non-Tier” rates, which would specify the rates available to ETP Holders that do not qualify for either Tier 1 or Tier 2, as follows:

- A credit of \$0.0020 per share for orders adding displayed liquidity (a decrease from the current credit of \$0.0024 per share);
- A credit of \$0.0024 per share for MPL Orders adding liquidity (no change from the current rate);
- A credit of \$0.0020 per share for orders adding liquidity that set a new BBO on the Exchange (a decrease from the current credit of \$0.0026 per share); and
- A fee of \$0.0030 per share for orders removing liquidity (no change from the current rate).

The Exchange proposes to keep the current credit of \$0.0020 per share for non-displayed orders adding liquidity and the current fee of \$0.0005 per share for orders executing in the opening or closing auctions, without any change. Neither of those rates depends on an ETP Holder achieving a certain level of Adding ADV.

These proposed changes are intended to incentivize ETP Holders to increase the liquidity-providing orders they send to the Exchange, which would support the quality of price discovery on the Exchange and provide additional liquidity for incoming orders. The Exchange believes that by correlating the level of credits to the level of executed adding volume on the Exchange, the Exchange’s fee structure would encourage ETP Holders to submit more liquidity-providing orders to the Exchange that are likely to be executed, thereby increasing the potential for incoming marketable orders submitted to the Exchange to receive an execution. As noted above, the Exchange operates in a competitive environment, particularly as it relates to attracting

non-marketable orders that add liquidity to the Exchange. The Exchange believes that the proposed tiering of credits applicable to displayed orders, MPL Orders, and orders setting a new NYSE American BBO for ETP Holders that meet the proposed Adding ADV requirements would serve as an additional incentive for ETP Holders to send liquidity to and improve quoting on the Exchange in order to qualify for such credits.

In addition, the Exchange believes that the proposed changes to the fees for removing liquidity, taken together, will incentivize submission of additional liquidity to a public exchange, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. As noted, the Exchange operates in a competitive environment, particularly as it relates to attracting non-marketable orders, which add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Because the proposed reconfiguration of fees for removing liquidity from the Exchange involves the introduction of new fees and/or new requirements, the Exchange does not know how many ETP Holders could qualify for such new fees based on their current trading profile on the Exchange and if they choose to direct order flow to the Exchange. Without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange.

The proposed rule change is designed to be available to all ETP Holders on the Exchange and is intended to provide ETP Holders a greater incentive to direct more of their orders to the Exchange.

Finally, the Exchange would delete the current presentation of the Standard Rates for liquidity adding and removing orders and replace it with the following table in the Price List, reflecting all of the rates proposed above:



		<u>Fees and Credits per Share</u>					
	<u>Minimum Adding ADV Requirement (shares)</u>	<u>Adding Liquidity - Displayed</u>	<u>Setting New NYSE American BBO</u>	<u>MPL Adding Liquidity</u>	<u>Adding Liquidity - Non- displayed</u>	<u>Removing Liquidity</u>	<u>Executions at Open and Close</u>
<u>Tier 1</u>	<u>3,500,000</u>	<u>\$ (0.0026)</u>	<u>\$ (0.0029)</u>	<u>\$ (0.0030)</u>	<u>\$ (0.0020)</u>	<u>\$ 0.0026</u>	<u>\$ 0.0005</u>
<u>Tier 2</u>	<u>700,000</u>	<u>\$ (0.0023)</u>	<u>\$ (0.0024)</u>	<u>\$ (0.0029)</u>	<u>\$ (0.0020)</u>	<u>\$ 0.0027</u>	<u>\$ 0.0005</u>
<u>Non-Tier</u>	<u>N/A</u>	<u>\$ (0.0020)</u>	<u>\$ (0.0020)</u>	<u>\$ (0.0024)</u>	<u>\$ (0.0020)</u>	<u>\$ 0.0030</u>	<u>\$ 0.0005</u>

The Exchange proposes this non-substantive change to reorganize and enhance the presentation in the Price List in order to add clarity and transparency, thereby making the Price List easier to navigate.

The proposed changes are not otherwise intended to address any other issues, and the Exchange is not aware of any significant problems that market participants would have in complying with the proposed changes.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>14</sup> in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,<sup>15</sup> in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities, is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market

<sup>14</sup> 15 U.S.C. 78f(b).

<sup>15</sup> 15 U.S.C. 78f(b)(4) and (5).

system “has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.”<sup>16</sup>

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue to reduce use of certain categories of products, in response to fee changes. ETP Holders can choose from any one of the 16 currently operating registered exchanges, and numerous off-exchange venues, to route such order flow. Accordingly, competitive forces constrain exchange transaction fees that relate to orders on an exchange. Stated otherwise, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

#### The Proposed Fee Change Is Reasonable

In light of the competitive environment in which the Exchange currently operates, the proposed rule change is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange’s market share relative to its competitors. The Exchange believes the proposed change is also reasonable because it is designed to attract higher volumes of orders transacted on the Exchange by ETP Holders, which would benefit all market participants by offering greater price discovery and an increased opportunity to trade on the Exchange.

#### Proposed Tier Requirements

The Exchange believes that aligning the Adding ADV tier requirements for Tier 1 and Tier 2 for orders adding liquidity and orders removing liquidity will be clearer for investors and will eliminate potential investor confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest.

The Exchange believes that the proposed change increasing to 3,500,000 shares the minimum Adding ADV required for ETP Holders to access its best pricing for orders adding and

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<sup>16</sup> See Regulation NMS, supra note 6, 70 FR at 37499.

removing liquidity under proposed Tier 1 is a reasonable attempt to increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. Currently, ETP Holders may qualify for the Exchange's best pricing for orders adding liquidity by achieving an Adding ADV of 2,500,000 shares, and may qualify for the Exchange's best pricing for orders removing liquidity by achieving an Adding ADV of 10,000 shares. The Exchange believes that these current levels are not a sufficient incentive, and that raising these Adding ADV requirements to the proposed level of 3,500,000 shares would incentivize ETP Holders to send more of their liquidity-adding orders to the Exchange as opposed to other venues, so that they may qualify for the Exchange's best pricing for adding and removing liquidity.

Similarly, the Exchange believes that adjusting the current Adding ADV requirement of 750,000 shares to 700,000 shares for orders adding displayed liquidity under proposed Tier 2, and adding specified fees under proposed Tier 2 for orders removing liquidity for ETP Holders with at least 700,000 shares, will enable more ETP Holders to qualify for this tier, thereby incentivizing more ETP Holders to send their orders to the Exchange. This, in turn, would increase liquidity on the Exchange and improve the Exchange's market share relative to its competitors. The proposed 700,000 share Adding ADV requirement is a reduction from the current requirement of 750,000 shares to qualify for certain credits for orders adding liquidity, and would introduce a Tier 2 Adding ADV requirement for orders removing liquidity. The Exchange believes that establishing the Tier 2 Adding ADV requirement at this level would incentivize ETP Holders to send more of their liquidity-adding orders to the Exchange, so that they may qualify for Tier 2 pricing for adding and removing liquidity.

#### Proposed Fees and Credits

The Exchange believes that the proposed changes to the credits available for orders adding liquidity to the Exchange are reasonable. The Exchange believes it is reasonable to increase the credits available under Tier 1 and Tier 2 for MPL Orders adding liquidity as it is expected to create incentives for ETP Holders to add price-improving liquidity to the Exchange

and increase the quality of order execution on the Exchange's market, which benefits all market participants, as MPL Orders provide opportunities for market participants to interact with orders priced at the midpoint of the PBBO. The Exchange also believes it is reasonable to increase the credits available under Tier 1 for orders setting a new BBO on the Exchange, as it is expected provide incentives for ETP Holders to provide aggressively-priced orders that improve the market by setting the BBO on the Exchange. Similarly, the Exchange believes that lowering the credits available under Tier 2 and at the Non-Tier level for orders adding displayed liquidity and for orders setting a new BBO on the Exchange is reasonable because the current higher credits did not result in greater liquidity as the Exchange had anticipated. The Exchange believes it is reasonable to revise credits when such incentives become underutilized.

The Exchange believes that the proposed changes to the fees for orders removing liquidity to the Exchange are reasonable. The purpose of these changes is to encourage additional liquidity on the Exchange because market participants benefit from the greater amounts of displayed liquidity present on a public exchange. The Exchange believes that the proposed new fees will incentivize additional liquidity on a public exchange to qualify for lower fees for removing liquidity, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The proposal is thus reasonable because all ETP Holders would benefit from such increased levels of liquidity.

Because the proposal involves the introduction of new requirements as well as new fee and credit levels, the Exchange does not know how many ETP Holders could qualify for the new fees and credits based on their current trading profile on the Exchange and if they choose to direct order flow to the Exchange. As previously noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether the proposed rule change would result in any ETP Holder qualifying for a particular tier, credit, or fee. The Exchange believes the proposed changes are reasonable as it would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful

added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

#### Proposed Non-Substantive Reformatting

The Exchange believes that the proposed changes are reasonable because they are clarifying and non-substantive. The changes are designed to make the Price List easier to read and more user-friendly. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits, to the benefit of market participants and the investing public. The Exchange believes the change is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

### The Proposed Change Is an Equitable Allocation of Fees and Credits

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange believes its proposal equitably allocates its fees among its market participants by fostering liquidity provision and stability in the marketplace.

### Proposed Tier Requirements

The Exchange believes its proposal equitably allocates its fees and credits among its market participants because all ETP Holders that participate on the Exchange may receive the proposed fees and credits if they elect to send their orders to the Exchange and meet the minimum Adding ADV requirement corresponding to the fee or credit. Without having a view of ETP Holders' activity on other markets and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder sending more of their orders to the Exchange. The Exchange cannot predict with certainty how many ETP Holders would avail themselves of this opportunity, but additional orders would benefit all market participants because it would provide greater execution opportunities on the Exchange. The Exchange anticipates that multiple ETP Holders would endeavor to send more of their orders for execution on the Exchange in order to meet the proposed requirements for Tier 1 and/or Tier 2 pricing, thereby earning the proposed higher credits and paying the proposed lower fees.

The Exchange further believes that the proposed change is equitable because it is reasonably related to the value to the Exchange's market quality associated with higher volume in orders. The Exchange believes that the proposed pricing adjustments would attract order flow and liquidity to the Exchange, thereby contributing to price discovery on the Exchange and benefiting investors generally.

The Exchange believes that the proposed rule change is equitable because maintaining or increasing the proportion of orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution

methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency, and improving investor protection.

The proposal neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders would be eligible to qualify for the proposed credits if they meet the proposed Adding ADV requirements for each proposed tier. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently meet the Adding ADV requirements to qualify for the Exchange's best prices, the proposal would provide a second tier with lower requirements that could allow those ETP Holders to still qualify for preferential credits and fees. The proposal will also not adversely impact their ability to qualify for other credits or fees provided by the Exchange.

#### Proposed Fees and Credits

The Exchange believes the proposal equitably allocates fees and credits among market participants because all ETP Holders that participate on the Exchange may qualify for the proposed credits and fees. The Exchange believes that the proposed changes, taken together, will incentivize ETP Holders to send additional adding liquidity to achieve lower fees when removing liquidity from the Exchange, thereby increasing the number of orders that are executed on the Exchange, promoting price discovery and transparency and enhancing order execution opportunities and improving overall liquidity on a public exchange. The Exchange also believes that the proposed change is equitable because it would apply to all similarly situated ETP Holders that add or remove liquidity. The proposed change also is equitable because it would be consistent with the applicable rate on other marketplaces.<sup>17</sup>

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<sup>17</sup> For example, Cboe EDGX offers credits for adding non-retail displayed liquidity ranging from \$0.0016 to \$0.0034 and fees for removing liquidity from \$0.00275 to \$0.0030. See

As previously noted, the Exchange operates in a competitive environment, particularly as it relates to attracting orders that add liquidity to the Exchange. The Exchange does not know how much order flow ETP Holders choose to route to other exchanges or to off-exchange venues. Because the proposed reconfiguration of the fees involves the introduction of requirements as well as new fees and credits, the Exchange does not know how many ETP Holders could qualify for the new rates based on their current trading profiles on the Exchange and if they choose to direct order flow to the Exchange. Without having a view of ETP Holder's activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holder directing orders to the Exchange.

#### Proposed Non-Substantive Reformatting

The Exchange believes that the proposed changes are equitable because they are clarifying and non-substantive. The changes are designed to make the Price List easier to read and more user-friendly. The Exchange believes that this proposed format will provide additional transparency of Exchange fees and credits, to the benefit of market participants and the investing public. The Exchange believes the change is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion. The Exchange believes that the proposed reformatted the Price List is equitable because the resulting streamlined Price List would continue to apply to all ETP Holders on an equal basis.

#### The Proposed Fee Change Is Not Unfairly Discriminatory

#### Proposed Tier Requirements



The Exchange believes that the proposal is not unfairly discriminatory. In the prevailing competitive environment, ETP Holders are free to disfavor the Exchange's pricing if they believe that alternatives offer them better value. The Exchange believes it is not unfairly discriminatory to provide revised requirements and corresponding tiered fees and credits, as the proposed fees and credits would be provided on an equal basis to all ETP Holders that meet the proposed tier requirements. Further, the Exchange believes the proposed fees and credits would incentivize ETP Holders that meet the new tiered requirements to send more orders to the Exchange. Since the minimum Adding ADV requirements and some of the proposed fees and credits would be new, no ETP Holder currently qualifies for them. As noted, without a view of ETP Holder activity on other exchanges and off-exchange venues, the Exchange has no way of knowing whether this proposed rule change would result in any ETP Holders qualifying for the proposed adding tiers. The Exchange believes the proposal is reasonable as it would provide an incentive for ETP Holders to direct their order flow to the Exchange and provide meaningful added levels of liquidity in order to qualify for the credits, thereby contributing to depth and market quality on the Exchange.

In addition, the Exchange believes that the proposal is not unfairly discriminatory because it neither targets nor will it have a disparate impact on any particular category of market participant. All ETP Holders that provide liquidity could be eligible to qualify for the proposed credits under Tier 1 or Tier 2 if they meet the proposed Adding ADV requirements. The Exchange believes that offering credits for providing liquidity will continue to attract order flow and liquidity to the Exchange, thereby providing additional price improvement opportunities on the Exchange and benefiting investors generally. As to those market participants that do not presently qualify for the adding liquidity credits, the proposal will not adversely impact their ability to qualify for other credits provided by the Exchange. Finally, the submission of orders is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, they can choose the extent of their activity in this regard. The Exchange believes

that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

#### Proposed Fees and Credits

The Exchange believes that that the proposed fees and credits for ETP Holders that add or remove liquidity will incentivize submission of additional liquidity to a public exchange to qualify for the revised fees and credits, thereby promoting price discovery and transparency and enhancing order execution opportunities for ETP Holders. The proposal does not permit unfair discrimination because the proposed rates would be applied to all similarly situated ETP Holders and other market participants, who would all be eligible for the same rates on an equal basis. Accordingly, no ETP Holder already operating on the Exchange would be disadvantaged by this allocation of fees and credits.

Finally, the Exchange notes that the submission of orders to the Exchange is optional for ETP Holders in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard.

#### Proposed Non-Substantive Reformatting

The Exchange believes that the proposed reformatted the Price List is not unfairly discriminatory because the resulting streamlined Price List would continue to apply to all ETP Holders equally. The Exchange believes that the reformatted Price List, as proposed, will be clearer and less confusing for investors and will eliminate potential confusion, thereby removing impediments to and perfecting the mechanism of a free and open market and a national market system, and, in general, protecting investors and the public interest. The Exchange believes the change is reasonable and would not be inconsistent with the public interest and the protection of investors because investors will not be harmed and in fact would benefit from increased clarity and transparency on the Price List, thereby reducing potential confusion.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

#### B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,<sup>18</sup> the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed fee change would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery, and transparency and enhancing order execution opportunities for ETP Holders. As a result, the Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes "more efficient pricing of individual

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<sup>18</sup> 15 U.S.C. 78f(b)(8).

stocks for all types of orders, large and small.”<sup>19</sup>

*Intramarket Competition.* The Exchange believes the proposed change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed change is designed to attract additional orders to the Exchange. The Exchange believes that the proposed changes would incentivize market participants to direct their orders to the Exchange. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage ETP Holders to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

*Intermarket Competition.* The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange currently has less than 1% market share of executed volume of equities trading. In such an environment, the Exchange must continually adjust its fees and credits to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

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<sup>19</sup> See Securities Exchange Act Release No. 51808, 70 FR 37495, 37498-99 (June 29, 2005) (S7-10-04) (Final Rule).

The Exchange believes that the proposed change could promote competition between the Exchange and other execution venues, including those that currently offer similar order types and comparable transaction pricing, by encouraging additional orders to be sent to the Exchange for execution.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)<sup>20</sup> of the Act and subparagraph (f)(2) of Rule 19b-4<sup>21</sup> thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)<sup>22</sup> of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission's Internet comment form (<https://www.sec.gov/rules/sro.shtml>); or

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<sup>20</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>21</sup> 17 CFR 240.19b-4(f)(2).

<sup>22</sup> 15 U.S.C. 78s(b)(2)(B).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEAMER-2021-54 on the subject line.

Paper comments:

- Send paper comments in triplicate to: Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEAMER-2021-54. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<https://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make

available publicly. All submissions should refer to File Number SR-NYSEAMER-2021-54 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>23</sup>

J. Matthew DeLesDernier,  
Assistant Secretary.

[FR Doc. 2022-00979 Filed: 1/19/2022 8:45 am; Publication Date: 1/20/2022]

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<sup>23</sup> 17 CFR 200.30-3(a)(12).